

BRB No. 99-1052 BLA

ELIZABETH MOKRITSKY)	
(Widow of FRANK J. MOKRITSKY))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Elizabeth Mokritsky, New Philadelphia, Pennsylvania, *pro se*.

Rita Rappolo (Henry L. Solano, Solicitor of Labor, Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, the miner's widow, without the assistance of counsel, appeals the Decision and Order Denying Benefits (99-BLA-515) of Administrative Law Judge Robert D. Kaplan on a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge found that the Director, Office of Workers' Compensation Programs (the Director), conceded the presence of pneumoconiosis arising from coal mine employment, 20 C.F.R. §§718.202 and 718.203, but found that claimant failed to establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).¹ Benefits were, according,

¹ The miner previously filed a claim for benefits on November 17, 1981, which was administratively denied on February 24, 1982. Director's Exhibit 14. The miner filed a

denied. Claimant appeals, generally contending that the administrative law judge erred in failing to award benefits. The Director responds, urging affirmance of the administrative law judge's Decision and Order.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In a survivor's claim filed after January 1, 1982, claimant must establish the existence of pneumoconiosis, *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993), that pneumoconiosis arose out of coal mine employment, *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988), and that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of death. See *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); 20 C.F.R. §§718.202, 718.203, 718.205(c). The United States Court of Appeals for the Third Circuit, within whose jurisdiction this case arises, has held that pneumoconiosis will be considered a substantially contributing cause of death when it actually hastens the miner's death. *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-101 (3d Cir. 1989); see *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997).

The evidence of record contains a death certificate, which states that the cause of death was due to a withdrawal of respiratory support, sepsis and "ICMO." Director's Exhibit 2. An autopsy was performed by Dr. Hargrave, who concluded that the miner "likely died secondary to massive myocardial infarct of approximately one month of age with recent extension of his infarct to remaining viable myocardium." Director's Exhibit 3. Dr. Naeye found that pneumoconiosis, if present, was far too mild to have produced any abnormalities

duplicate claim on July 31, 1986, which was also administratively denied on October 7, 1986. Director's Exhibit 13. The miner filed a third claim on June 21, 1995, but requested withdrawal of his claim, which the administrative law judge approved on April 9, 1997. Director's Exhibit 12. On March 25, 1997, the miner died. Claimant filed a survivor's claim on July 7, 1998.

of lung function, any disability, interfered in any way with the ability of the miner to do hard physical work, or contributed in any way to or hastened his death. Director's Exhibit 4. Of the remaining reports, many are hospital records treating the miner for his heart disease and other conditions. Director's Exhibits 5, 6, 7, 9. In addition, the record contains the medical opinions of Drs. Rashid and Ahluwalia, both of whom examined the miner before his death. Director's Exhibit 12. Therefore, as the record is devoid of any evidence which could sustain claimant's burden of establishing death due to pneumoconiosis, we affirm the administrative law judge's finding that claimant failed to establish entitlement to benefits on the basis of the record before him. *Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Lukosevicz, supra*; *Reigh v. Director, OWCP*, 19 BLR 1-64 (1995).

Accordingly, the Decision and Order Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge